

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

JOHN MARSHALL,

Petitioner,

v.

JASON LEWIS,

Respondent.

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No. 1:19-cv-00083-CDP

**MEMORANDUM AND ORDER**

This matter is before the Court on the motion of petitioner John Marshall for leave to commence this civil action without prepayment of the required filing fee. (Docket No. 2). Having reviewed the motion and the financial information contained therein, the Court has determined that petitioner is unable to pay the filing fee. *See* 28 U.S.C. § 1915(a)(1). Therefore, the motion will be granted.

Plaintiff has also filed a motion to appoint counsel. (Docket No. 3). The motion will be denied at this time. In civil cases, a pro se litigant does not have a constitutional or statutory right to appointed counsel. *Ward v. Smith*, 721 F.3d 940, 942 (8<sup>th</sup> Cir. 2013). *See also Stevens v. Redwing*, 146 F.3d 538, 546 (8<sup>th</sup> Cir. 1998) (stating that “[a] pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case”). Rather, a district court may appoint counsel in a civil case if the court is “convinced that an indigent plaintiff has stated a non-frivolous claim...and where the nature of the litigation is such that plaintiff as well as the court will benefit from the assistance of counsel.” *Patterson v. Kelley*, 902 F.3d 845, 850 (8<sup>th</sup> Cir. 2018). When determining whether to appoint counsel for an indigent litigant, a court considers relevant factors such as the complexity of the case, the ability of the pro se litigant to investigate the facts, the

existence of conflicting testimony, and the ability of the pro se litigant to present his or her claim. *Phillips v. Jasper Cty. Jail*, 437 F.3d 791, 794 (8<sup>th</sup> Cir. 2006).

After reviewing these factors, the Court finds that the appointment of counsel is not warranted at this time. Plaintiff has demonstrated, at this point, that he can adequately present his claims to the Court. The Court will entertain future motions for appointment of counsel as the case progresses.

Additionally, plaintiff has filed a motion for an evidentiary hearing. (Docket No. 4). The Court will deny the motion, as respondent has not yet been given an opportunity to file a response.


Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for leave to proceed in forma pauperis (Docket No. 2) is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff's motion to appoint counsel (Docket No. 3) is **DENIED** at this time.

**IT IS FURTHER ORDERED** that plaintiff's motion for an evidentiary hearing (Docket No. 4) is **DENIED**.

Dated this 15th day of July, 2019.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE